as hospitalization, a death in the family, or similar circumstances which prevent the claimant from appearing are demonstrated, failure of the claimant to appear at the third scheduled hearing shall constitute abandonment of the request for a hearing.

[52 FR 10512, Apr. 1, 1987]

§ 10.138 Review of decision.

(a) Under the discretionary authority granted by 5 U.S.C. 8128(a), the Office may review an award for or against the payment of compensation at any time on its own motion and may, as a result of that review, affirm, reverse or modify the previous decision and inform the claimant, the claimant's representative and the employing agency of the decision.

(b)(1) Under the discretionary authority granted by 5 U.S.C. 8128(a), the Office may review an award for or against the payment of compensation on application of the claimant. No formal application for review is required, but the claimant must make a written request identifying the decision and the specific issue(s) within the decision which the claimant wishes the Office to reconsider, and give the reasons why the decision should be changed. Where the decision or issue cannot be reasonably determined from the claimant's application for review, the application will be returned to the claimant for clarification without further action by the Office with respect to the application. The claimant may obtain review of the merits of the claim by—

(i) Showing that the Office erroneously applied or interpreted a point of law, or

(ii) Advancing a point of law or a fact not previously considered by the Office, or

(iii) Submitting relevant and pertinent evidence not previously considered by the Office.

(2) Any application for review of the merits of the claim which does not meet at least one of the requirements listed in paragraphs (b)(1)(i) through (iii) of this section will be denied by the Office without review of the merits of the claim. Such a denial of application is not subject to review under this section or to hearing under § 10.131. Further, the Office will not review

under this paragraph a decision denying or terminating a benefit unless the application is filed within one year of the date of that decision. Where proper application is submitted and the Office finds that merit review of the claim is warranted, the Office shall furnish the employing agency with a copy of the claimant's application for reconsideration and allow 15 days for the agency to submit any comments and/or documents which it believes relevant and material to the issue in question. Any comments or materials submitted by the agency are subject to review and comment by the claimant within 15 days following the date the Office sends any such agency submission to the claimant. The Office shall then review the decision and any agency submission, decide the claim, and inform the claimant, the claimant's representative and the employing agency of the decision.

[52 FR 10512, Apr. 1, 1987]

§ 10.139 Review by the Employee's Compensation Appeals Board.

Final decisions of the Office, except decisions concerning the amounts payable for medical services, and decisions concerning exclusion and reinstatement of medical providers, are subject to review by the Employees Compensation Appeals Board (ECAB), U.S. Department of Labor, under rules of procedure set forth in part 501 of this title.

[49 FR 18978, May 3, 1984. Redesignated at 52 FR 10512, Apr. 1, 1987]

§ 10.140 Participation in claims process by employing agency.

Proceedings conducted with respect to claims filed under the Act are nonadversary in character. Accordingly, a claimant's employing agency shall not have the right, except as provided in subpart C of this part, to actively participate in the claims adjudication process. However, the employing agency may, under circumstances other than that described in § 10.102(b), investigate the circumstances surrounding an injury to an employee and the extent of disability (e.g., an agency may investigate an employee's activities where it appears the employee alleging total disability may be performing